

LIM YAM TECK v. LIM SWEE CHIANG & ANOR.

[O.C.J. (Kulasekaram J.) January 4, 1978]
[Singapore — Civil Suit No. 2139 of 1975]

Damages — Personal injuries — Quantum agreed — Dispute as to liability.

Practice and Procedure — High Court changing decision after dismissal of action.

Torts — Negligence — Personal injuries as a result of motor accident — Dispute as to liability.

The plaintiff in this case brought an action against the defendants for personal injuries caused by the negligence of the first defendant in driving a motor vehicle belonging to the second defendant. The quantum of damages had been agreed by both parties. The only dispute was as to the liability of the parties.

The plaintiff gave evidence that at the time of the accident, he was riding his motorcycle along the stretch of River Valley Road, keeping close to the left edge of the road, about 3' or 4' from it. When riding in this manner at a speed of 24 to 25 m.p.h. a motor pickup came behind and grazed against his right handle bar and he fell down and lost consciousness. The plaintiff admitted that he had been charged in the Traffic Court for careless riding of his motor cycle in connection with the said accident and he admitted he had pleaded guilty to the charge and had been fined. He explained the circumstances under which he pleaded guilty there and asserted he was never careless in the riding of his motor cycle. The police investigating officer found that the front mudguard of the plaintiff's motorcycle was slightly dented. It was bent or buckled inwards but the damage was only very slight. On the motor pickup he found a slight dent at the rear panel towards the nearside above the tail light.

After the hearing of the case the learned trial judge dismissed the plaintiff's claim as he felt that the damages to the rear of the pickup could not possibly fit in with the plaintiff's version of the accident. However on further consideration and especially as he had formed the opinion that the plaintiff was a truthful witness, he reversed his decision, as he found that the plaintiff's version was not altogether inconsistent and irreconcilable with the damage found on the motor pickup.

Held, allowing the plaintiff's claim: the plaintiff had given a true account as best as he could of what happened in connection with the accident. The first defendant was entirely to blame for the accident.

Cases referred to in argument: *Goh Geok Buay & Ors. v. H. J. Edward & Anor.* [1974] 1 M.L.J. 43; *Chow Kay Kong v. Chin Tong & Ors.* [1967] 2 M.L.J. 31; *Foong Nan v. Sagadevan* [1971] 2 M.L.J. 31; *Rasidin bin Partorjo v. Frederick Kiai* [1976] 2 M.L.J. 214; *Abraham Ho Ah Loke v. William Mason Hing* [1949] M.L.J. 37.

[Editorial Note: The defendants' appeal against the court's judgment was dismissed by the Court of Appeal (Civil Appeal No. 25 of 1977) on August 10, 1978].

CIVIL SUIT.

Singa Retnam for the plaintiff.

C.S. Wu for the defendants.

Cur. Adv. Vult.

Kulasekaram J.: The claim of the plaintiff in this action was for personal injuries suffered and consequential loss and expense incurred by the plaintiff and caused by the negligence of the 1st defendant in driving motor vehicle No. SGC 5734 belonging to the 2nd defendant and as servant or agent of the 2nd defendant along River Valley Road, Singapore on June 28, 1972 at or about 8.30 p.m.

At the outset of the trial the counsel for the parties informed me that they had agreed that the full quantum of damages on the basis of a 100% liability should be in the sum of \$9,337.50 cts. inclusive of both General and Special Damages. The only issue for trial before me was as to the question of liability.

It is common ground that at the date and time in question the plaintiff was riding his motor scooter No. SAF 3444 and the 1st defendant driving the motor pickup van No. SGC 5734 along River Valley Road from the direction of Clemenceau Avenue towards Kim Seng Road, both the vehicles travelling in the same direction when these 2 vehicles came into collision. As a result of this accident the plaintiff suffered personal injuries and loss giving rise to this claim here. This accident took place along this stretch of River Valley Road somewhere near "Times House".

An agreed bundle of documents marked AB1-10 was also put in evidence by consent. These included the two police reports of the plaintiff and the first defendant regarding the accident, AB1-2 and AB3 respectively, the police sketch plan of the scene of the accident showing the position of the motor cycle and some scratch marks on the road, and the key to the sketch plan, AB4 and AB5 respectively, the police damage report, AB10, setting out the damage found on each of the vehicles by the police and some medical reports concerning the injuries sustained by the plaintiff.

According to the plaintiff his motor cycle which was involved in this accident was a small second hand motor cycle of capacity 80 cc which he had bought for \$200. At the relevant time he was riding his motor cycle along the said stretch of River Valley Road, keeping close to the left edge of the road, about 3' or 4' from it. When riding in this manner at a speed of 24 to 25 m.p.h. a motor pickup came from behind and grazed against his right handle bar and he fell down and lost consciousness. When he next regained consciousness he found himself in Outram Road General Hospital with his right leg broken and with further injuries on his face.

In cross examination he said he saw the pickup when the grazing acting took place. It was then overtaking him and it was its nearside, the bodywork towards the rear, that grazed against his motor cycle. He further said that in the course of overtaking him the pickup swerved to its left. When it was put to him that the damage to pickup was on its rear he answered "How do I know how the pickup suffered damage on the rear".

He denied the defence suggestion that while following behind the pickup he had collided into the back of it due to sheer careless riding. He admitted that he had been charged in the Traffic Court for careless riding of his motor cycle in connection with this accident and he admitted he had pleaded guilty to the charge and had been fined. In further cross examination he explained the circumstances under which he pleaded guilty there and asserted he was never careless in the riding of his motor cycle.

Kamil s/o Abdul Hamid, Sgt. 8827 of the Traffic Police, who was the police investigating officer of this case and who had visited the scene of the accident at 9.15 p.m. the same night and had inspected the 2 vehicles for damage gave evidence to the effect that on the motor cycle SAF 3444 he found that its front mudguard was slightly dented, in that it was bent or buckled inwards but the damage was only very slight. The front number plate was also bent

slightly towards the nearside. On the motor pickup SGC 5734 he found a slight dent at the rear panel towards the nearside above the tail light. According to him there would have been a slight knock to cause this damage and it did not appear to have been caused by a grazing contact.

First defendant on the other hand had this to say about how this accident happened. On the day and time in question he was going home alone in the pickup which was then empty. He was driving along the said stretch of River Valley Road and as he was approaching the junction with St. Thomas Walk this accident occurred. He was driving at a speed of 20 to 30 m.p.h. travelling on a straight path and about 4' from the left edge of the road when he suddenly heard a bang at the rear of his pickup. He applied his brakes and stopped his van without swerving to his side. He quickly got off the van and saw a person lying on the road and a motor cycle was lying on its nearside near this person. He examined his vehicle for damage and found a slight dent on the centre rear portion of his van. He went on to say it was nearer to the nearside, near the left side tail light of the van. He went on to say that at the time of the accident he was not in the course of overtaking the motor cycle or for that matter any other vehicle. He was an old man and he drives slowly.

In cross examination he admitted that he had in his police report stated that he was at the time of the accident travelling at 30 m.p.h and he agreed that that was his correct speed. He said that it was a straight road and he was looking ahead and he would not have noticed if a vehicle was following him close on the rear as there was no need to keep such a look out then. He denied overtaking plaintiff's motor cycle and then cutting in suddenly and thereby causing this accident. He agreed that in his report he had stated that he heard a *loud* bang. He also agreed that the damage to his vehicle was only slight.

At the end of the hearing I dismissed the plaintiff's action with costs. In so doing I took the view that as the only damage to the pickup was on the rear just above the nearside tail light, this indisputable fact, could not possibly fit in with the plaintiff's version of the accident and therefore preferred the defendant's version of the accident. However when I heard the plaintiff and the defendant give evidence before me I formed the opinion that plaintiff was a truthful witness and gave a true account of the accident and not the defendant.

After I had dismissed this action and arisen from court as I was not too happy with the end result I gave the matter further consideration and I then took the view that I may not be justified in having come to the conclusion that plaintiff's version could not be reconciled with the indisputable damage found on the defendant's motor pickup.

That same afternoon I directed my personal assistant to inform both counsel not to treat the matter as concluded and final as I would like to hear further submissions from them.

A Consequent on this direction both counsel appeared before me on a later date when I explained the circumstances to them and invited further submissions on the matter from them.

B Mr. Wu on behalf of the defendants made a thorough and comprehensive submission and urged every point that could be put forward on behalf of the defendants why my earlier decision was the correct one and that it should not be interfered with.

C I took the view that my earlier decision should be varied as the plaintiff's version is not altogether inconsistent and irreconcilable with the damage found on the motor pickup. I took the view that the plaintiff had given a true account as best as he could of what happened in connection with this accident. I considered the defendant to be an untruthful witness. I found the defendant did overtake the plaintiff and swerved to his left and in that act the defendant's pickup's rear portion of the nearside either grazed the right handle of the plaintiff's motor cycle or some part of his body and thereby made him unsteady on his motor cycle and caused the motor cycle to run into the rear of the motor pickup van. This seems to be probably what happened on that day. In accident's of this kind a motor cyclist may not correctly state the point of impact as his impression of it may well be wrong. It is not always possible for him to state the exact point of impact and his conviction as to what was the point of contact may well prove to be wrong. But his general account of what took place on that evening may still be correct as indeed I find it was here.

E I also accepted plaintiff's explanation for his pleading guilty in the Summons Case in the Magistrate Court.

F Mr. Wu for the defendants submitted that if the motor pickup was overtaking the motor cycle then the motor cycle could not have collided into the rear of the motor pickup as its speed would be greater than that of the motor cycle. This would only be so if both the vehicles were keeping a straight course along the road. The evidence here is that as it overtook it swerved to its left slightly. In addition one should also bear in mind that the speed of the motor pickup then was only slightly more than that of the motor cycle. In the circumstances I would not consider Mr. Wu's submission on this point of any real value, or substance here.

G H For these reasons I found that the 1st defendant was entirely to blame for this accident and ordered that judgment be entered in favour of the plaintiff in the agreed sum of \$9,337.50 cts. with costs.

Claim allowed.

Solicitors: Singa Retnam; Donaldson & Burkinshaw.

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